SLS 12RS-399 **ORIGINAL**

Regular Session, 2012

SENATE BILL NO. 548

BY SENATORS RISER AND ALARIO

ECONOMIC DEVELOPMENT. Creates the Competitive Projects Payroll Incentive Program which grants rebates of up to 15% of qualifying payroll to certain businesses and rebates of sales tax or capital expenditures if DED determines it will result in significant positive economic benefit to the state. (7/1/12)

AN ACT

To enact Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:3111, relative to the creation of the Competitive Projects Payroll Incentive Program; to provide for contract for the payment of rebates to certain qualified businesses; to provide for procedures and requirements for the execution of such contracts and the payment or repayment of such rebates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 54 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:3111 is hereby enacted to read as follows:

**CHAPTER 54. COMPETITIVE PROJECTS PAYROLL INCENTIVE PROGRAM**

**§3111. Competitive Projects Payroll Incentive Program**

**A. Definitions. For purposes of this Section, the following words or terms as used in this Chapter shall have the following meaning, unless a different meaning appears from the context:**

**(1) "Basic health benefits plan" means coverage for basic hospital care,**

**coverage for physician care, and coverage for health care which is determined by the Department of Economic Development to have a value of at least one dollar and twenty-five cents per hour and which is the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act, 29 U.S.C.A. §201, et seq.**

**(2) "Board" means the Board of Commerce and Industry.**

**(3) "Business" means any individual, firm, joint venture, association, corporation, estate, partnership, business trust, receiver, syndicate, or any other legal business entity.**

**(4) "Department" means the Department of Economic Development.**

**(5) "Headquarter jobs" means permanent full-time executive, administrative, or professional jobs based at a principal or regional office located in Louisiana, in which are located the principal or regional executive officers normally constituting a principal or regional headquarters providing corporate governance. Such principal or regional executive officers include but shall not be limited to chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.**

**(6) "New Jobs" means permanent full-time direct new jobs based at the facilities designated in the contract and filled by residents of the state.**

**(7) "New payroll" means payment by the business to its employees for new jobs, exclusive of benefits and defined as wages under Louisiana Employment Security Law (La. R.S. 23:1472(20)).**

**(8) "Program" means the Competitive Projects Payroll Incentive Program.**

**(9) "Qualified business" means a business certified by the secretary as meeting the eligibility requirements of Subsection B of this Section, approved by the board to participate in the program, and executing a contract providing**

**the terms and conditions for its participation.**

**(10) "Secretary" means the secretary of the Department of Economic Development.**

**(11) "Shared services center jobs" shall mean jobs of full time employees located in the state of Louisiana which are based at a business located in Louisiana that performs specific corporate operational tasks for the business, its affiliates, or customers, such as accounting, human resources, payroll, or purchasing.**

**B.(1) Eligibility Requirements. A business shall be eligible for participation in the program if all of the following requirements are met:**

**(a) At least fifty percent of the total annual sales of the business from a Louisiana site or sites is to out-of-state customers or buyers, in-state customers or buyers but the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, or the federal government, or any combination thereof.**

**(b) The activities of the business at a Louisiana site or sites includes corporate headquarters, clean technology, next generation automotive, aerospace, destination healthcare, research and development operations, pharmaceutical manufacturing, renewable energy or other business sector targeted by the secretary as a focus of the department's economic development efforts.**

**(c) The business offers, or will offer within ninety days of the effective date of qualifying for the incentive rebates pursuant to the provisions of this Chapter, a basic health benefits plan to the individuals it employs as provided in Paragraph A(1) of this Section.**

**(2) The secretary, at his discretion, may include sales by affiliates of the business in determining the percentage of sales meeting the requirements of Paragraph (1) of this Subsection.**

**(3) With the exception of a business providing at least twenty-five new**


Coding: Words which are ~~struck through~~ are deletions from existing law; words in **boldface type and underscored** are additions.

**headquarter jobs or shared service center jobs, a business primarily engaged in retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, financial services, or venture capital funds, shall not be eligible for this program.**

**C.(1) Applications. At the invitation of the secretary, a business may apply for a contract by submitting to the department such certified statements and substantiating documents as the department may require.**

**(2) Certification. The secretary may certify eligibility of the business and request board approval of its participation in the program on terms and conditions specified by the secretary in a proposed contract, if the secretary determines that:**

**(a) The business meets the eligibility requirements provided for in Subsection B of this Section.**

**(b) Participation in the program is needed in a highly competitive site selection situation to encourage the business to locate or expand in the state.**

**(c) Securing the project will result in a significant positive economic benefit to the state.**

**(3) Approval; contract administration.**

**(a) Upon the board's approval of participation in the program by the business, the secretary shall execute the contract with the business, and provide a copy to the Department of Revenue.**

**(b) The contract shall provide for a rebate to the qualified business based upon new payroll, and shall include the following provisions:**

**(i) The percentage of new payroll eligible for rebate, up to a maximum of fifteen percent.**

**(ii) The maximum amount of new payroll eligible for rebate.**

**(iii) The number of new jobs and amount of new payroll required to be created and maintained, and any other performance obligations required to be met in order to remain qualified for participation in the program.**

**(iv) Designation of the facility or facilities eligible for participation in the program.**

**(v) Monitoring of performance and consequences for failure to perform and other contract violations.**

**(vi) An initial term of the contract, which may be up to five years, and any renewal term available at the discretion of the secretary, which may be up to an additional five years.**

**(4)(a) In addition, a qualified business shall be entitled to either the same sales and use tax rebates authorized in R.S. 51:1787 for capital expenditures for the facility or facilities designated in the contract, or the project facility expense rebate provided for in Paragraph (c) of this Subsection, if the employer meets the enterprise zone program hiring requirements and all other limitations, procedures, and requirements in R.S. 51:1787.**

**(b) Any qualified business which receives a contract pursuant to this Chapter shall also be entitled to a rebate of local sales and use taxes under the same procedures and requirements provided for in R.S. 51:1787 for approval of rebates for the sales and use taxes of political subdivisions and law enforcement districts, including but not limited to the requirement that any such request for a rebate of local sales and use taxes be accompanied by an endorsement resolution approved by the governing authority of the appropriate political subdivision or law enforcement district in whose jurisdiction the qualified business is or will be located.**

**(c) In lieu of the sales and use tax rebate, a qualified business shall be entitled to a capital expenditure rebate equal to one and one-half percent of the amount of capital expenditures for the facility or facilities designated in the contract. For purposes of this Subparagraph, the term "qualified expenditures" means amounts classified as capital expenditures for federal income tax purposes related to the project plus exclusions from capitalization provided for in Internal Revenue Code Section 263(a)(1)(A) through (L), minus the**

**capitalized cost of land, capitalized leases of land, capitalized interest, capitalized costs of machinery and equipment, and the capitalized cost for the purchase of an existing building. When a qualified business purchases an existing building and capital expenditures are used to rehabilitate the building, the costs of the rehabilitation only shall be considered qualified expenditures. Additionally, a qualified business shall be allowed to increase its qualified expenditures to the extent the qualified business' capitalized basis is properly reduced by claiming a federal credit. A qualified business earns the project facility expense rebate in the qualified business' fiscal year in which the project is placed in service, but the qualified business may not claim the project facility expense rebate until the Department of Economic Development signs a project completion report or such other time as provided for by rule or regulation. The project completion report for the project facility expense rebate shall adhere to the same requirements found in R.S. 51:1787(A)(1)(a)(ii) for the sales and use tax rebate.**

**D. Annual Certification of Eligibility. (1) The approved qualified business shall file applications for annual rebates with the Department of Economic Development. A corporate officer of the qualified business must sign documentation to certify its continued eligibility for the rebates, as provided in Subsection B of this Section. The qualified business may be subjected to a limited audit by the Department of Economic Development to verify such eligibility at the company's expense. The approved contract between the qualified business and the Department of Economic Development shall authorize the continued rebate as long as the business remains a qualified business as defined in this Section and complies with the terms and performance obligations of its contract, as they existed at the time of such approval. If a qualified business fails to maintain the eligibility requirements for participation in the program or fails to meet all performance obligations of the contract, the secretary may suspend or terminate its participation in the program.**

**(2) Upon approval of the application for annual rebates, the department shall send the application to the Department of Revenue for payment of the rebate. Payment shall be made from the current collections of income and franchise taxes.**

**E. A taxpayer shall not receive any other incentive administered by the Department of Economic Development for any expenditures or jobs for which the taxpayer has received a credit pursuant to this Section.**

**F. The department may promulgate rules and regulations in accordance with the Administrative Procedure Act as are necessary to implement the provisions of this Section. Any rules and regulations promulgated pursuant to the provisions of this Section shall only be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs.**

Section 2. This Act shall become effective on July 1, 2012; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 2012, or on the day following such approval by the legislature, whichever is later.

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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Riley Boudreaux.

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DIGEST

Proposed law creates the Competitive Projects Payroll Incentive Program which provides a "qualified business" a contract to receive the following rebates under a 5-year contract, renewable for another 5 years:

1. A rebate of up to 15% of "new payroll" determined to be eligible for such rebate by the secretary of the Department of Economic Development [DED] if the number of new jobs and amount of "new payroll" required to be created and maintained, along with any other performance obligations under the contract are met.

   "New payroll" is defined as payment by the business to its employees for new jobs, exclusive of benefits and defined as wages under Louisiana Employment Security Law (La. R.S. 23:1472(20)).

2. The same rebates of state and local sales and use tax rebates authorized for Enterprise Zone-eligible business purchases of material used in the construction or improvement of, or addition to, a building and machinery and equipment used in the enterprise as provided in R.S. 51:1787 for the qualified business' expenditures on its facility at the facility or facilities designated by the department in the contract.

Or

In lieu of the sales and use tax rebate, a "project facility expense rebate" equal to one and one-half percent of the amount of qualified business' "qualified expenditures" on the facility or facilities designated by the department in the contract.

"Qualified expenditures" is defined as amounts classified as capital expenditures for federal income tax purposes plus certain exclusions from capitalization in IRC §263(a)(1)(A) - (L), minus the capitalized cost or leases of land, capitalized interest, capitalized costs of machinery and equipment, and the capitalized cost for the purchase of an existing building. Only the capital expenditures for rehabilitation of an existing building are considered "qualified expenditures". Additionally, qualified expenditures may be increased to the extent the qualified business' capitalized basis is properly reduced by claiming a federal credit.

Proposed law defines a "qualified business" eligible for the rebate contracts as businesses meeting all of the following criteria:

1. Businesses that the DED determines will have the following activities at its Louisiana site: corporate headquarters; clean technology; next-generation automotive; aerospace; destination healthcare; research and development operations; pharmaceutical manufacturing; renewable energy; or other business sectors targeted by the Secretary as a focus of the department's economic development efforts.

2. Businesses which have, or will have within one year, sales of at least 50% of its total sales to out-of-state customers or buyers, to in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use, to the federal government or any combination thereof. The secretary of DED, at his discretion, may include sales of affiliates of the business in determining the 50% sale requirement

3. Businesses which offer, or will offer within 90 days of the effective date of qualifying for the rebates a "basic health benefits plan" to the individuals it employs. "Basic health benefits plan" is defined in the same manner as for Enterprise Zone employers, meaning coverage for basic hospital care, physician care, and health care which is determined by the DED to have a value of at least $1.25 per hour and which is the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity who are exempt from the minimum wage and maximum hour requirements.

   Unless a business is providing at least 25 new "headquarter jobs" or "shared service center jobs", the following businesses, are not eligible for rebates: retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, financial services or venture capital funds.

   "Headquarter jobs" are defined as jobs of full time employees that are executive, administrative, or professional jobs based at a principal or regional office located in Louisiana, in which are located the principal or regional executive officers normally constituting a principal or regional headquarters providing corporate governance. Such principal or regional executive officers include but are not limited to chief executive officer, chief operating officer, and other senior level officers or appropriate regional equivalents.

   "Shared services center jobs" are defined as jobs of full time employees residing in the state which are based at a business located in Louisiana that performs specific corporate operational tasks for the business, its affiliates or customers, such as accounting, human resources, payroll, or purchasing.

Proposed law requires the qualified business to apply to DED after being invited to participate by the secretary of DED.

DED must determine if the applicant is an eligible "qualified business", that participation in the program is needed in a highly competitive site selection situation to encourage the business to locate or expand in the state, and that securing the project will result in a significant positive economic benefit to the state.

Proposed law requires DED to propose a contract for the applicant to the Board of Commerce and Industry. Upon the Board's approval, the secretary must execute the contract. The contract must provide a rebate to qualified businesses based upon new payroll. The contract will have an initial term of up to 5 years. It may be renewed for an additional 5 years provided that the qualified business has complied with all the terms of the contract and has complied with the provisions of the proposed law.

The contract shall provide for a rebate to the qualified business based upon new payroll, and shall include the following provisions:

1. The percentage of new payroll eligible for rebate, up to a maximum of 15%.

2. The maximum amount of new payroll eligible for rebate.

3. The number of new jobs and amount of new payroll required to be created and maintained, and any other performance obligations required to be met in order to remain qualified for participation in the program.

4. Designation of the facility or facilities eligible for participation in the program.

5. Monitoring of performance and consequences for failure to perform and other contract violations.

6. An initial term of the contract, which may be up to five years, and any renewal term available at the discretion of the secretary, which may be up to an additional five years.

Proposed law requires a qualified business to file applications for rebates with DED to show its continued eligibility for the rebates. It may be subjected to a limited audit by DED to verify its eligibility.

Proposed law requires the qualified business to file an application for an annual rebate with the DED, which contains a sworn statement by a duly authorized officer of the qualified business that the qualified business had complied with the contract and the proposed law during the fiscal year. Upon approval of the application for the annual rebate, the application is forwarded to the Department of Revenue for payment. The rebate is made from the current collections of the income and franchise tax.

Proposed law prohibits a taxpayer who participates in this program from receiving any other incentive administered by DED for any expenditures for which the taxpayer has received a credit pursuant to this program.

Proposed law allows DED to promulgate rules and regulations necessary for the implementation of the program. Any such rules or regulations promulgated shall be subject to oversight by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs only.

Effective July 1, 2012.

(Adds R.S. 51:3111)